IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 7275 of 2007(N)

PETITIONER:

RASUL SHERIEF, AGED 54 YEARS,
S/O. MEERA SAHIB, RESIDING AT MEERA COTTAGE,
TKMC P.O., KARIKODE, KOLLAM-5.

BY ADV. SRI.P.BALAKRISHNAN
SRI.T.MADHU

RESPONDENTS:

---

1. UNION BANK OF INDIA,
REPRESENTED BY ITS MANAGER, KOLLAM.

2. MARIAMMA JAMES,
ROSE DALE KULAPOYKAYIL, KANJIRAKODE,
KUNDARA P.O., KOLLAM.

3. K.K. JAMES,
ROSE DALE, KULAPOYKAYIL, KANJIRAKODE,
KUNDARA P.O., KOLLAM.

R1 BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.7275 OF 2007

Dated this the 13th day of March, 2007

JUDGMENT

According to the petitioner, he has vendor's lien over the property mortgaged by the private parties 2 and 3 to the first respondent Bank and therefore, the first respondent Bank is incompetent to take up proceedings under the SARFAESI Act. The case of the petitioner is that the second respondent was the superior officer of the petitioner and she had prevailed upon him to sell the property for consideration on the basis of a cheque and that such cheque bounced and the parties are litigating before the competent courts. It is also his case, since the entire consideration due for the sale in favour of respondents 2 and 3 have not been paid, he has a vendor's lien. I am not satisfied that there is any situation where the writ court could come to the aid of the petitioner. It is a matter which requires adjudication on disputed question of facts. The learned counsel for the Bank submits that the property has already been taken possession.

Under such circumstances, the writ petition fails. It is dismissed without prejudice to the right of the petitioner to any relief in accordance with law.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.